

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6329 / June 16, 2023**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 34943 / June 16, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21490**

**In the Matter of**

**PACIFIC INVESTMENT  
MANAGEMENT COMPANY  
LLC**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 203(e) AND  
203(k) OF THE INVESTMENT ADVISERS  
ACT OF 1940, AND SECTIONS 9(b) AND  
9(f) OF THE INVESTMENT COMPANY  
ACT OF 1940, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND  
A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Pacific Investment Management Company LLC (“PIMCO” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that

#### **Summary**

1. These proceedings involve violations of the Investment Company Act and the Advisers Act by PIMCO, a registered investment adviser, arising out of the firm's material omissions concerning its use of paired interest rate swaps for PIMCO Global StocksPLUS & Income Fund ("PGP"), a closed-end fund advised by PIMCO. As of September 1, 2014 through August 26, 2016, PIMCO inadequately disclosed that paired interest rate swaps in PGP's portfolio had become a material source of distributable income, which enabled PIMCO to maintain PGP's dividend rate. The continued use of paired swaps also contributed to a decline in the net asset value ("NAV") of PGP. By failing to adequately disclose that a significant portion of PGP's distributions came from paired interest rate swaps, PIMCO violated Section 34(b) of the Investment Company Act and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

#### **Respondent**

2. PIMCO is a Delaware limited liability company with its principal place of business in Newport Beach, California. PIMCO has been registered as an investment adviser with the Commission since 1994. As of March 31, 2023, PIMCO had approximately \$2.24 trillion in regulatory assets under management. PIMCO is a majority-owned subsidiary of Allianz Asset Management of America LLC ("Allianz Asset Management"). Through various holding company structures, Allianz Asset Management is indirectly wholly owned by Allianz SE.

#### **Other Relevant Entity**

3. PGP, formed in May 2005, is a closed-end fund that trades on the NYSE (PGP). As of February 28, 2023, PGP had about \$82 million in total net assets.

#### **Background**

##### **Paired Interest Rate Swaps**

4. An interest rate swap is an agreement between two parties in which one stream of future interest payments is exchanged for another based on a specified principal amount. When investing in interest rate swaps, a fixed income investor may seek investment returns based on their views on the shape of the yield curve (taking a view on the relative changes in interest rates of different maturities) and/or duration (how sensitive the prices of fixed income instruments are to a change in interest rates). PGP's use of interest rate swaps had been described in PGP's initial public offering prospectus as designed to manage the duration and yield curve exposure of the

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

portfolio. Disclosures included that interest rate derivatives may also be used to provide synthetic exposure to debt instruments, and to attempt to generate current, distributable income.

5. According to PIMCO, a paired swap involves two or more interest rate swaps with certain offsetting characteristics. In a typical PGP paired swap, for the first leg of a paired swap, PIMCO entered PGP into an agreement to make floating rate payments and receive fixed rate payments for a specified number of years (the “initial leg”). For the second leg of a paired swap, PIMCO agreed on PGP’s behalf for the Fund to make fixed rate payments and receive floating rate payments for a specified number of years (the “forward leg”). The payment obligations on the forward leg did not begin until a future date after the commencement of the initial leg. Although the two legs were not always entered into simultaneously, the initial leg and forward leg, in combination, were not expressing a duration or yield curve exposure in PGP’s portfolio when they were economically offsetting.

6. The fixed rate payments PGP received on the initial leg were usually greater than the floating rate payments they owed the swap counterparty. Thus, during the term of the initial leg, PGP typically received net interest rate payments from the swap counterparty. As investment income, those interest rate payments could be used as a source for PGP’s investor distributions.

7. However, in most cases PIMCO later would closeout for PGP the forward leg of the paired swap with the swap counterparty before the forward leg became effective (i.e., before PGP began making the fixed rate payment to the counterparty). When it did so, the terms of the forward leg typically resulted in PIMCO making a closeout payment for PGP to the counterparty, resulting in a capital loss to the Fund.

8. Thus, when PGP held two interest rate swap legs, the initial leg produced investment income that contributed to PGP’s investor distributions, but the later closeout of a forward leg typically produced a capital loss. During a number of quarters of the time period at issue, these paired swaps generated capital losses without sufficient offsetting returns from other investments in the Fund. Under those circumstances, portions of PGP’s dividend distributions that were derived from payments received by PGP on the initial leg of paired swaps were taxable as ordinary income for tax purposes, but were economically equivalent to a return of capital.

9. PIMCO used interest rate swaps to generate income for distributions since the inception of the Fund. From at least September 1, 2014 through August 26, 2016, paired interest rate swaps contributed to a pool of distributable income in an amount that totaled at least 24% of PGP’s distributions paid to investors in each month, thereby contributing a material portion to PGP’s quarterly dividend of 18.3 cents per share.

10. At the September 2016 board of directors meeting, PIMCO discussed a review of paired swaps in PGP and disclosures on paired swap usage and impact to the Fund.

11. At the September 2016 board of directors meeting, PIMCO also recommended a 20% cut to PGP’s dividend rate. On October 3, 2016, PIMCO announced a cut to PGP’s dividend from 18.3 cents per share to 14.6 cents per share.

## Inadequate Disclosures Concerning the Paired Interest Rate Swaps

12. PGP's initial public offering prospectus disclosed that income would be generated by, among other means, the Fund "active[ly] manag[ing] duration and yield curve exposure" of its debt portfolio, which backs the Fund's equity index positions, and consists of income-producing debt securities, including interest rate swaps. By at least 2014, PGP's paired swaps produced a material portion of distributable income and many did not reflect active duration or yield curve management strategies.

13. While the initial public offering prospectus and shareholder reports included certain risks related to PGP's use of interest rate swaps, PIMCO inadequately disclosed information concerning paired swaps in PGP's annual shareholder reports filed at PGP's fiscal years ending 2014 and 2015. In particular, PIMCO failed to disclose that a significant portion of PGP's distributions came from these transactions, and that the forward leg of the paired swaps had a substantial risk of capital loss and a downward effect on the NAV.

14. PIMCO revised its disclosures in PGP's fiscal year-end 2016 annual shareholder report to disclose the use of paired swaps and the potential resulting impact to the Fund's portfolio.

### Violations

15. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for an investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to an investor or prospective investor in the pooled investment vehicle," or "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." Scier is not required to establish a violation of Section 206(4) or the rules thereunder. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992). As a result of the conduct described above, PIMCO willfully<sup>2</sup> violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

16. As a result of the conduct described above, PIMCO willfully violated Section 34(b) of the Investment Company Act, which makes it unlawful for any person to make any untrue statement of a material fact in any registration statement, or other document filed or transmitted pursuant to the Investment Company Act, or for any person so filing or transmitting to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. Establishing a violation of 34(b) of the Investment Company Act does not require proof of scier. *In the Matter*

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<sup>2</sup> "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

of *Fundamental Portfolio Advisors, Inc.*, Advisers Act Rel. No. 2146, 2003 WL 21658248, at \*8 (July 15, 2003).

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, and Section 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent PIMCO cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, and Section 34(b) of the Investment Company Act.

B. Respondent PIMCO is censured.

C. Respondent PIMCO shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$6,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying PIMCO as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Corey Schuster, Co-Chief of the Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE Washington, DC 20549.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman  
Secretary